STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended	**05/26/05**	Bill No:	**AB 1030**
Tax:	**Property**	Author:	**Umberg**
Related Bills:			

BILL SUMMARY

This bill would exempt from property tax any use of a convention center for seven days or less in a calendar year as a taxable possessory interest.

Summary of Amendments

The amendments reduce the threshold number of days from fourteen to seven.

ANALYSIS

Current Law

Revenue and Taxation Code Section 107 sets forth three elements that must exist to find that a use of publicly owned tax-exempt property rises to a level of a taxable possessory interest:

- independence
- durability, and
- exclusivity.

Existing law defines "durable" to mean "for a determinable period with a reasonable certainty that the use, possession, or claim with respect to the property or improvements will continue for that period." Presently, there is no statutory or regulatory minimum time period establishing a durable interest. The law only requires that the period of use be "determinable."

Proposed Law

This bill would amend Section 107 to require a minimum period of use of more than seven calendar days, before any interest or use in a public convention center could be considered durable. Since an interest that is not "durable" fails one of the three essential elements, these interests would be exempt from property tax as a taxable possessory interest.

In General

Possessory Interests. In certain instances a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as "possessory interests" and are typically found where an individual or entity leases, rents, or uses federal, state or local government facilities and/or land.

Revenue and Taxation Code Section 107 establishes parameters within which assessors and judicial authorities use to determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case.

Low Value Ordinances. Section 1(a) of Article XIII of the California Constitution provides that all property is taxable unless otherwise provided by that constitution or the laws of the United States. Section 7 of Article XIII provides that the Legislature, two-thirds of the membership of each house concurring, may authorize county boards of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them.

Revenue and Taxation Code Section 155.20 provides the statutory implementation for this constitutional authorization. It provides that counties may exempt from property tax all real property with a base year value and all personal property with a full value so low that, if not exempt, the taxes and special assessments on the property would amount to less than the cost of assessing and collecting them. Except for certain kinds of possessory interests, the maximum value of property that may be exempted is $5,000. With respect to possessory interests in convention or cultural facilities and fairgrounds and fairground facilities, a board of supervisors has the authority to exempt interests that have a value of $50,000 or less.

Related Legislation

AB 119 (Ackerman) in 1999 and AB 1971 (Ackerman) in 1998 would have established a 7 day durability bright line test, but for all types of possessory interests. The City of Anaheim was the sponsor of these bills. AB 119 was held in the Assembly Appropriations Committee. AB 1971 also failed passage in the Assembly Appropriations Committee, but it was selected as an item for consideration in the budget conference committee. As introduced, AB 1971 would have amended §155.20 to increase from $50,000 to $100,000 the value of possessory interests in fairgrounds and convention or cultural centers that may be exempted under a low value ordinance adopted by the county board of supervisors.

In 1995, SB 657 (Ch. 498, Stats. 1995; Maddy) proposed a rebuttable presumption that an interest is "durable" only if it exceeds a period of one year. This provision of the bill was amended out on April 15, 1995. In 1996, SB 1903 (Maddy) contained amendments that would have created, with respect to public transportation corridors, a rebuttable presumption that to be "durable" an interest in tax exempt property, along with any options to renew, must (1) be greater than 60 days and (2) not be subject to cancellation by the entity granting the interest during that time period. That measure failed.

The $50,000 low value ordinance for possessory interests was added to Revenue and Taxation Code Section 155.20 in 1996 by SB 1737 (Ch. 570, Stats. 1996; Alquist). The City of San Jose sponsored this measure over a concern that the taxation of San Jose Convention Center users would place their convention center at a competitive disadvantage with other event holding venues. As enacted, the $50,000 exemption for possessory interests was limited to uses of publicly owned convention or cultural facilities. The following year, SB 33 (Ch. 106, Stats. 1997; Maddy) added possessory interests in fairgrounds to the type of possessory interests that could be exempted under a $50,000 low value ordinance provided by Section 155.20.

Related Litigation. On September 25, 1997, the Sixth District Court of Appeals ruled in *City of San Jose* v. *Carlson*, 57 Cal.App. 4th 1348, that two-time, short term uses of convention facilities met the criteria of durability, independence, and exclusivity necessary to constitute a taxable possessory interest.

Related Property Tax Rules. In 1999, the Board revised Property Tax Rule 20, "Taxable Possessory Interests," a general rule on possessory interests. In the rulemaking process, the subject of a "bright line" test on durability was an issue. Industry had sought to establish a 30 day minimum time period while assessors were opposed to setting any minimum time period. Ultimately, the rule adopted did not contain a minimum time period on durability.

COMMENTS

1. **Sponsor and Purpose.** The City of Anaheim is sponsoring this bill because it does not believe that short-term uses of the Anaheim Convention Center should be subject to property tax. The City believes that the taxation of convention center users could draw business away from their center. This bill would serve as a legislative vehicle to provide that short-term users of the convention center are not subject to a property tax assessment.

2. **Amendments.** The May 26 amendments reduced the threshold number of days from 14 to 7.

3. **Court Suggests "Bright Line" Test.** This measure accepts the invitation made by the Sixth District Court of Appeals in *City of San Jose* v. *Carlson* (1997) 57 Cal.App. 4th 1348, to establish some statutory standards in measuring durability since past court rulings have diluted the definition of durability to "almost nonexistence." In *City of San Jose* the court stated:

   > "Although we agree that the element of durability seems to have been 'diluted to a degree of almost nonexistence' (*United Airlines, Inc.* v, *County*

of San Diego (1991) [cite omitted], the Legislature has not seen fit to reverse the growing trend toward finding taxable possessory interests in short-term uses, even in its most recent amendments to Section 107. If there is a sound basis for distinguishing between a second time user and a third time user of government-owned property for purposes of identifying a taxable possessory interest, **it is within the province of the Legislature to clarify the parameters of that interest in terms of frequency, duration, and length of time between uses."** [Emphasis added.]

4. **Prior Constitutional Considerations.** Prior to the *City of San Jose* decision, legislation to establish durability standards in terms of a specific time period was argued to be an unconstitutional exemption of real property. Some may still believe this is a statutory exemption of real property beyond the Legislature's constitutional authority. However, in *City of San Jose,* the court acknowledged the appropriateness of legislative action to set parameters on the element of durability.

5. **Provides certainty and statewide uniformity with respect to convention center users.** There is a lack of consistency among county assessors in the taxation of possessory interests. A short-term use of publicly-owned property that is taxed in one county may not be taxed in another. This is generally due to limited staffing resources to actively seek these types of property interests given competing priorities or the county's administrative practices in the area of possessory interests. Consequently, establishing a minimum time period would give both taxpayers and assessors a measure of certainty with respect to convention centers.

6. **On the other hand, this bill establishes disparate tax treatment of short-term uses of government property depending on the type of property used.** Other short-term users of government-owned property subject to property tax, such as fairgrounds and cultural facilities, will likely argue that they are being unfairly treated in comparison to convention center users.

7. **Will 7 Days Be Gradually Increased To 14 Days, 30 Days, then 1 Year?** Once the precedent of a "bright line" test on durability is established, opponents of this measure state that the threshold level will be periodically raised to a level where many currently taxable possessory interests would be exempted from tax under the guise of durability.

8. **Low Value Ordinance Option Available for Convention Centers.** Although there is existing statutory authority to exempt possessory interests under either the $5,000 or $50,000 low value ordinance provisions of Section 155.20, not all counties have adopted low value ordinances and to date few county boards of supervisors have adopted the special $50,000 level for possessory interests in convention centers, fairgrounds and cultural facilities. Those counties which have not adopted low value ordinances have not concluded, or have not been able to justify that the cost to assess and collect these possessory interests would exceed the amount of taxes collected.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, public and staff of the law changes and addressing ongoing implementation issues and questions.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Data supplied by seven counties that keep track of short-term uses of public property (Alameda, Los Angeles, Orange, San Diego, San Francisco, San Mateo, and Santa Clara) indicate that possessory interests for uses of not more than seven days totaled $28.1 million a year in 2004 in those counties. These uses include conventions and business and trade shows, annual sporting events, fairs and festivals, and concerts and other performing arts events.

Staff estimates that these sample counties account for approximately 80% of the statewide assessed value total for the short-term use of public property. Expanding the seven counties, for the purposes of calculating a statewide estimate, gives the following assessed value of potentially affected possessory interests:

$28.06 million	7 counties' assessed value for affected possessory interests
÷ 80%	7 counties portion of statewide locally assessed values total
$35.1 million	Estimated statewide assessed value potentially affected

Revenue Summary

If short-term uses of public convention centers of not more than seven days were not treated as possessory interests, this bill would reduce property tax revenues from the basic 1 percent property tax rate by about $351,000 annually.

Qualifying Remarks

The estimate does not include possessory interests that are exempted due to low value under subdivision (b) (1) of Section 155.20 of the Revenue and Taxation Code.

Analysis prepared by:	Rose Marie Kinnee	(916) 445-6777	06/01/05
Revenue estimate by:	Chris Butler	(916) 445-0840	
Contact:	Margaret S. Shedd	(916) 322-2376	

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